

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 841 OF 2005

Kamala Mills Ltd. Petitioner.

Versus

Mr. K. Mahajan & Ors. Respondents.

Mr. Niranjan Vaghela with Ms. Punita Khanna
i/by M/s. Pandya & Co. for the petitioner.

Mr. Y. Desai for the Respondent No.2.

CORAM: DALVEER BHANDARI, C.J. &
S. A. BOBDE, J.

DATED : MARCH 1, 2005.

P.C. :

This petition is directed against the order passed by the
respondent No.1, the Estate Officer and Dy. General Manager,
Bank of Maharashtra, rejecting the application of the petitioner for

spot inspection.

2. In this petition, the petitioner has prayed for spot inspection by a Commissioner. According to the learned Counsel, the order passed by the Estate Officer is not appealable before the learned single Judge under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

3. The application for spot inspection has been rejected by a comprehensive order, relevant portion of which reads as under:

“(i) As far as point `(a)' of the above paragraph is concerned, petitioner's bank being the owner naturally is in possession of the premises which is not let out, would certainly rest with the bank and the respondent not being the owner cannot dispute the possession of the bank.

(ii) It is the case of the respondent that the petitioner bank is not utilizing certain premises (portion of the building) in same building, which the respondents have under their control certain premises. I hereby direct the petitioner's

bank to file a status report within 1 month about all the premises in the building where the respondents are occupying certain premises.”

- (iii) The respondents apprehend that the petitioner may alter and change the appearance of the premises, if they become aware of this litigation. The fact that the premises are owned by the bank and are in possession of the bank is not disputed. He observed that in this event, “I fail to understand, how come the petitioner bank can be prevented from altering and/or changing the appearance of the premises. This application is not founded on any sound reasoning and it does not appear to be bonafide. Further, it was also urged that the respondents do not have access to the said premises, but when the premises are owned by the petitioner bank, and are in possession, control, use and occupation of the petitioner bank, therefore certainly the respondents cannot have access

from the said premises. My attention to this fact was drawn by the petitioner's Advocate.”

- (iv) In point (e) above it is urged that by an order dated 9th October, 2003 and 21st October 2003, an order “appointing Commissioner and taking photography was granted”. My attention was drawn by the learned Advocate for the petitioner bank that it is wrong to say that on 21st October, 2003 a Commissioner was appointed. In fact the Commissioner was appointed by an order dated 9th October, 2003. Learned Advocate reminded and drew my attention to the history of the order dated 9th October, 2003 appointing a Commissioner. The petitioner's bank had made an application under Section 12 of Public Premises (Eviction of Unauthorised Occupants) Act, 1971. On 12th September, 2003 and the respondents were directed to disclose certain information and the respondents instead

of complying with the said direction filed written reply on 19th September, 2003 thereafter the claimants also filed their rejoinder. On 26th September, 2003 the respondents sought adjournment when the matter was kept for the oral submission for the purpose of objection to direction under Section 12 of Act. The matter was adjourned to 9th October, 2003 and on 12th September, 2003 the respondent was directed to disclose the information on or before 19th September, 2003 which the respondent failed to do so. Thereafter on 9th October, 2003 when the matter was before me and the respondent had not complied with the directions till then and in view of the said non-compliance of directions and unnecessary time being wasted under one or the other pretext by the respondents, therefore, the petitioner bank made an application for appointing the Commissioner as they were not left with any alternative. Due to the non-cooperation

by the respondents the said order of inspection by the Commissioner was granted, further the respondents being a private party, it is easy and convenient for them to manipulate; while the petitioner bank, being a nationalized bank cannot do such things as it is required to undergo various internal procedure of checks, balance and sanctions before any charge to the premises can be effected. In view of this, the said Commissioner was appointed on 9th October 2003 and is being refused to appoint at the present. In any event as stated above am directing the bank to file a status report of the premises, although the respondents are seeking information with regards 4th, 5th and 6th floor only. The respondents are given liberty to file fresh application after giving due notice to petitioners to press for the prayers prayed for in the application.”

4. We have heard the learned counsel for the parties and perused the impugned order passed by the Estate Officer.

5. On consideration of the totality of the facts and circumstances of the case, the order passed by the Estate Officer cannot be called to be perverse, requiring our interference in our extra-ordinary jurisdiction under Article 226 of the Constitution. In our opinion, this petition has been filed to delay the entire proceedings before the Estate Officer.

6. This petition, being devoid of any merit, is accordingly dismissed.

Sd/-

CHIEF JUSTICE

Sd/-

S. A. BOBDE, J.